

Brookings City Council
June 14, 2016 (unapproved)

The Brookings City Council held a meeting on Tuesday, June 14, 2016 at 6:00 p.m., at City Hall with the following members present: Mayor Tim Reed, Council Members Keith Corbett, Dan Hansen, Ope Niemeyer, Nick Wendell, and Patty Bacon. Council Member Mary Kidwiler was absent. City Attorney Steve Britzman, City Manager Jeffrey Weldon, and City Clerk Shari Thornes were also present.

Executive Session. A motion was made by Council Member Hansen, seconded by Council Member Corbett, to enter into Executive Session at 5:00 p.m. for purposes of consulting with legal counsel regarding proposed or pending litigation or contractual matters with the City Council, City Clerk, City Manager, and Mike Luce (via phone), Attorney with Lynn, Jackson, Schultz and Lebrun present. The motion carried by a unanimous vote. A motion was made by Council Member Corbett, seconded by Council Member Wendell, to exit out of Executive Session at 5:24 p.m. The motion carried by a unanimous vote.

Consent Agenda. A motion was made by Council Member Hansen, seconded by Council Member Corbett, to approve the Consent Agenda. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

3.A. Action to approve the agenda.

3.B. Action to approve the May 10 and May 17 City Council Minutes.

Library Services Director. Ashia Gustafson was introduced as the new Director of Library Services.

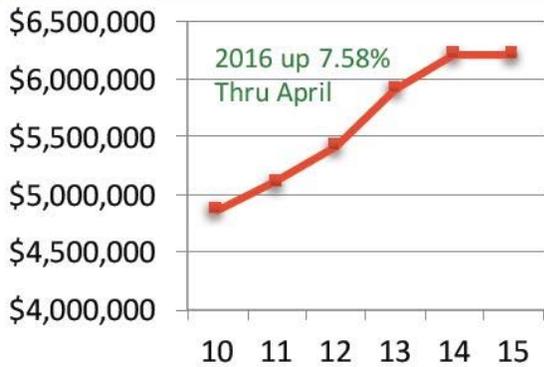
Mayor's Annual State of the City Message. Mayor Reed presented his annual State of the City Message.

“A city is not gauged by its length and width, but by the broadness of its vision and the height of its dreams.” – Herb Caen

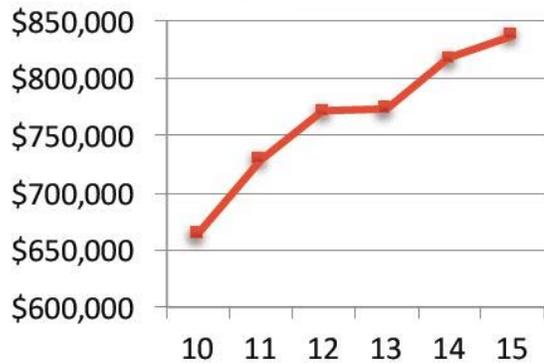
“A Financially Healthy and Growing City.

- Population: 2015 Census Estimate 23, 657. A 7% increase since 2010 Census (1.5% Annualized).
- Aa3 Bond Rating
- \$1.6M General Fund Surplus for 2015
- Healthy Reserves
- 2014 Property valuation increased \$52.8 M (2.2% Growth)
- Liquor Store – Record Net Profit of \$608,012
- Safe City / Drugs are an issue

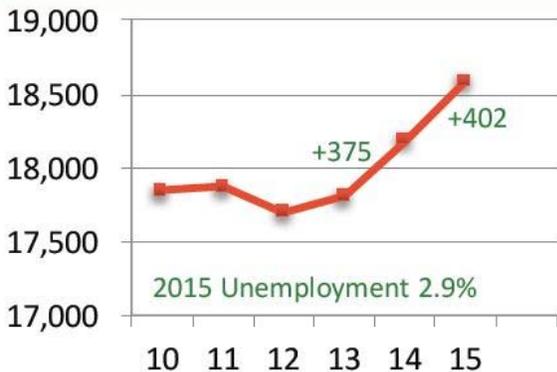
1st Penny Sales Tax Revenue



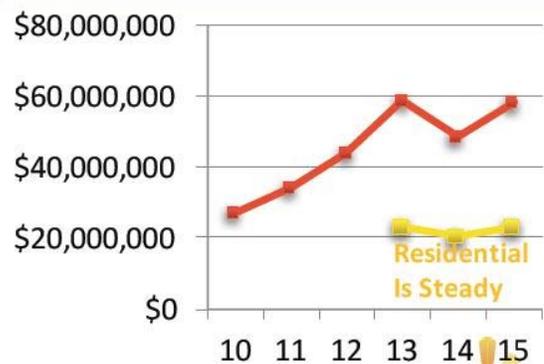
3rd Penny Sales Tax Revenue (BBB)



Brookings Workforce



Building Permits Value



Brookings financial picture is very healthy and we are growing!

This Council will have to lead with a vision of what Brookings should be. Otherwise we are doing Jeff’s job – managing.

The City of Brookings is committed to providing a high quality of life for its citizens and fostering diverse economic base through innovative thinking, strategic planning, and proactive, fiscally responsible municipal management.

We will have our Council “Advance” on July 13th, and collaborate to find the vision the Council will lead with. We shall then figure out the long-term strategy to accomplish the mission and vision.

What is the vision the Council will lead with?

We are an inclusive, diverse, connected community that fuels the creative class, embraces sustainability and pursues a complete lifestyle. We are committed to building a bright future through dedication, generosity, and authenticity. Bring your dreams!

Guiding Principles

- Evolving economic growth and community improvement strategy
- Active civic engagement
- Distinctive community assets

What is the long term strategic plan to accomplish mission and vision?

Long-Term Strategic Planning

- Strategic Planning Council Advanced – July 13th
 - Completed and In-Process
 - 10-year Community Reinvestment Plan (CRP)
 - Re-visit Annually
 - Comprehensive Master Plan
 - Affordable Housing Task Force
- Needed
 - Swiftel Center Strategic Plan
 - \$5M set aside in 10 year CIP
 - Strategic coordination between
 - Brookings County
 - Brookings School District
 - South Dakota State University
 - Brookings Economic Development Corp. (BEDC)
 - Brookings Health Services
 - Brookings Municipal Utilities
 - Recreation Investment
- Evolving Economic Growth Strategy
 - Work Force
 - Entrepreneurial Eco-System
 - Retail Growth
- Campus and Community Relationship
 - President Dunn – opportunity to take a new look
- Safe City
 - What is needed to combat drug issue?
- Transparency
- Citizen Engagement
- High Performance City

My favorite quote as an elected leader is, “A community, like an individual, has work to do.” – Aristotle

A special thank you to the citizens of Brookings, Volunteer Board Members, Jeff Weldon and staff, City Clerk and staff, and fellow Council Members.”

Resolution 16-048. A motion was made by Council Member Niemeyer, seconded by Council Member Corbett, that Resolution 16-048, a Resolution awarding the contract for the purchase of two police vehicles from Einspahr Ford, be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Resolution 16-048 - Resolution Awarding Bid for Police SUV

Whereas, the City of Brookings opened bids for Police Vehicles on Tuesday, May 24, 2016 at 1:30 pm at the Brookings City and County Government Center; and

Whereas, the City of Brookings has received the following bid for two Police Vehicles: Einspahr Ford Brookings: \$67,622 for two marked Sport Utility Vehicles (SUV).

Now Therefore, Be It Resolved that the low bid of \$67,622 for two Police SUV's from Einspahr Ford be accepted.

Ordinance 16-011. A public hearing was held on Ordinance 16-011, an Ordinance to Rezone a portion of the S ½ of the NE ¼ of Section 1-T109N-R50W from an Agricultural A District to a Residence R-1C District. A motion was made by Council Member Hansen, seconded by Council Member Wendell, that Ordinance 16-011, be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Ordinance 16-012. A public hearing was held on Ordinance 16-012, an Ordinance to rezone Lot 1 of Lots 1 & 2 of Lot A of the Replat of Outlot E, Maynes Addition from a Residence R-2 District to a Planned Development District (PDD). A motion was made by Council Member Corbett, seconded by Council Member Hansen, that Ordinance 16-012 be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Initial Development Plan. A motion was made by Council Member Bacon, seconded by Council Member Niemeyer, that the Initial Development Plan for Lot 1 of Lots 1 & 2 of Lot A of the Replat of Outlot E, Maynes Addition, be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Temporary Liquor Application. A public hearing was held on a temporary liquor application for the Brookings Volunteer Fire Association Street Dance to be held in the 300 Block of Main Avenue on July 16, 2016. A motion was made by Council Member Niemeyer, seconded by Council Member Corbett, that the temporary license be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Resolution 16-045. A public hearing was held on Resolution 16-045, a Resolution Determining the Necessity of Repairing or Installing Sidewalks in the City of Brookings at the Expense of Abutting Property Owners, 2016-01SWR Concrete Maintenance Project. A motion was made by Council Member Wendell, seconded by Council Member Bacon, that Resolution 16-045 be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Resolution 16-045 - Resolution Determining the Necessity of Repairing or Installing Sidewalks in the City of Brookings at the expense of abutting property owners;

2016-01SWR Concrete Maintenance Project

Be It Resolved by the City Council of the City of Brookings, South Dakota, as follows:

1. It is hereby determined that sidewalk repairs or installation is necessary abutting the parcels and lots of land in the City described in the Notice to Property Owners attached to this Resolution and marked as 2016-01SWR Concrete Maintenance Project.
2. Such sidewalks shall be installed to the width and of the materials prescribed by Chapter 74, "Streets, Sidewalks and other Public Places" and Article V. "Sidewalks", and to the grade and in accordance with the Plans and Specifications prepared in the office of the City Engineer.
3. The method of apportionment of benefits is as follows: Such assessments, unless paid within thirty (30) days after the date of mailing of a statement of account by the City, shall be collected by the City in accordance with the procedure for Plan One in Section 9-43-102, South Dakota Compiled Laws of 1967, as amended, with interest of 10% on the unpaid balance. Assessments amounting to less than \$300.00 shall be paid in one payment.
4. The City Clerk has caused a copy of the Resolution and a Notice to Property Owners to be mailed to each property owner by certified mail.

Master Drainage Plan Priority List. A motion was made by Council Member Hansen, seconded by Council Member Corbett, that the Master Drainage Plan Priority List, be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Deputy Mayor Appointment. A motion was made by Council Member Hansen, seconded by Council Member Niemeyer, that Council Member Keith Corbett to be appointed as Deputy Mayor through June 1, 2017. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

Resolution 16-053. A motion was made by Council Member Hansen, seconded by Council Member Wendell, that Resolution 16-053, a Resolution authorizing an Agreement with Bel Brands USA, Inc., be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Hansen, Reed, Bacon, and Wendell; Absent: 1 – Kidwiler.

AGREEMENT

THIS AGREEMENT (this "*Agreement*"), is hereby made and entered into as of June 14, 2016, by and among BEL BRANDS USA, INC., a Wisconsin corporation (the "*Company*"), the CITY OF BROOKINGS, SOUTH DAKOTA (the "*City*").

RECITALS:

WHEREAS, on January 31, 2012, the Company, the City, the State of South Dakota acting through the Governor's Office of Economic Development ("**GOED**") and the Brookings Economic Development Corporation ("**BEDC**") entered into a Site Location

and Development Agreement (the "*Development Agreement*") for the purpose of setting forth the proposals and respective commitments of the Company, the City, the State of South Dakota, certain other public authorities, and BEDC in a valid, binding and enforceable agreement in connection with the development, construction and operation of a cheese manufacturing facility (the "*Facility*") in Brookings, South Dakota; and

WHEREAS, the Company agreed to develop, construct and operate the Facility based on certain incentives conditionally provided by the City and the State of South Dakota for the purpose of inducing and assisting the Company to establish the Facility within the State of South Dakota and the City; and

WHEREAS, the City agreed to design, construct and commission, at its cost, a pretreatment waste water solution in accordance with article VIII of the Development Agreement.

WHEREAS, ownership of the Wastewater Solution, upon acknowledgement of its completion, was to be conveyed to the Company by the City with a one-year (extendable) warranty (including a process warranty) at which time the Company would assume responsibility for the operation and maintenance of the Wastewater Solution; and

WHEREAS, as set forth in Section 8.3(b) of the Development Agreement, the City is to provide the Company a grant of \$1,500,000 (the "*Grant*") toward the Company's capital expenditures in the Facility, payable once the City has received \$3.6 million in TIF Revenues and then only to the extent of available TIF Revenues collected by the City during the life of the TIF District; and

WHEREAS, the City arranged for the design and construction of a wastewater pre-treatment facility with the intention that it would satisfy the requirements of the Wastewater Solution in accordance with Article VIII of the Development Agreement (the "*Base WWS*"); and

WHEREAS, the parties agree that it was necessary to upgrade the Base WWS to include an Oxidizer, as defined herein, in order to satisfactorily pre-treat the Facility's wastewater on an ongoing basis; and

WHEREAS, the parties desire to enter into this Agreement to agree to a mutually agreeable plan to assure a Wastewater Solution that performs as specified in Article VIII of the Development Agreement;

NOW, THEREFORE, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINED TERMS

Section 1.1 Capitalized Terms. Capitalized terms utilized herein will have the meanings ascribed thereto in the Development Agreement or below, unless the meanings of such terms have been otherwise specified in a different context (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“*Base WWS*” means the wastewater treatment facility designed and built by the City to provide pre-treatment of waste generated by the Facility.

“*City*” means not only the City of Brookings, South Dakota but also its personal representatives, successors, assigns, agents, employees, officers, officials, directors, shareholders, and insurers.

“*Company*” means not only Bel Brands USA, Inc. but also any related companies, any parent companies, subsidiaries, divisions, affiliates, shareholders, partners, members, owners, officers, directors, consultants, insurers, agents, employees, assigns and successors in interest.

“*Development Agreement*” means the Site Location and Development Agreement dated January 31, 2012 among the Company, the City, the State of South Dakota acting through the Governor’s Office of Economic Development, and Brookings Economic Development Corporation.

“*Effective Date*” has the meaning set forth in Section 7.2 hereof.

“*Facility*” has the meaning set forth in the Recitals to this Agreement.

“*Oxidizer*” means an oxidation tank, together with all components and accessories, as more fully described in Exhibit A.

“*Wastewater Solution*” has the meaning set forth in Section 8.1(a) of the Development Agreement.

“*WWS Requirements*” has the meaning set forth in Section 8.1(a) of the Development Agreement.

ARTICLE II
REPRESENTATIONS BY THE CITY

Section 2.1 Representations. The City represents to the Company as follows:

(a) All payments to vendors (including but not limited to contractors, subcontractors, materialmen, sureties and government entities) owed in connection with the Wastewater Solution have been made by the City or by its vendors and lien waivers have been duly provided to the City by the same.

(b) There are no claims of any kind pending or threatened against the Base WWS.

Section 2.2 Removal of Liens and Encumbrances. The City will promptly arrange to remove any lien or other encumbrance that was or will be placed on the Wastewater Solution by a third party at any time in connection with anything related to the Wastewater Solution while it was under the City’s ownership and will defend, indemnify and hold the Company harmless from and against all claims and expenses arising out of or relating to such liens or encumbrances.

ARTICLE III
PUNCHLIST; OTHER COSTS INCURRED

Section 3.1 Remaining Punchlist Items. Exhibit B includes all items remaining to be completed for the construction of the Base WWS or otherwise necessary to place the Base WWS in a condition acceptable to the Company. The parties agree there are no other Punchlist items and that no additional Punchlist items may be added to Exhibit B.

Section 3.2 Punchlist. At its sole cost, the City will engage a contractor to complete the Punchlist items it has agreed to complete by no later than July 17, 2016, subject to the availability of Midwestern Mechanical to complete its punchlist work. The City also agrees to use its best efforts to engage the services of Midwestern Mechanical as soon as practicable. If it is determined that the concrete floor must be replaced, the City shall be responsible for the cost of such repair and replacement and for providing temporary tank, tank housing, and related piping during repairs. The City will be allowed extensions for Force Majeure events as defined in the Development Agreement. The City will enforce all applicable penalties for late completion, and will promptly remit all such penalties collected to the Company. The City will assign all applicable product and material warranties to the Company with the conveyance of the Base WWS.

Section 3.3 Payments from City to the Company. On or before July 14, 2016, the City will pay the Company the sum of \$947,578.93 to reimburse the Company for its costs related to the need to upgrade the Base WWS and its initial design. The Company will provide documentation of said costs on Exhibit "C".

ARTICLE IV
CONVEYANCE AND CONDITIONS OF ACCEPTANCE

Section 4.1 Conveyance of Wastewater Solution. Upon execution of the Agreement, the City agrees to deliver an executed instrument of conveyance substantially in the form of Exhibit D (the "*Transfer Instrument*"). The Company will accept the Transfer Instrument promptly upon the satisfaction of all conditions of acceptance as set forth in Section 4.2.

Section 4.2 Conveyance and Acceptance of Base WWS. The City will tender ownership of the Base WWS and the Company will accept conveyance thereof upon satisfaction of the following conditions:

- (1) The City and the Company must each be in compliance with their respective obligations under the Agreement and Development Agreement;
- (2) All Punchlist items have been completed and the Base WWS has been properly commissioned.

ARTICLE V
DESIGN, CONSTRUCTION AND FUNDING OF THE OXIDIZER

Section 5.1 Necessity of Oxidizer; Description. The Parties acknowledge that an Oxidizer was a necessary upgrade to the Base WWS to achieve pre-treatment performance of a Wastewater Solution required to be provided by the City under Article VIII of the Development Agreement. The parties acknowledge that the Company

undertook the design and construction of the Oxidizer, and the selection of all vendors in connection therewith.

Section 5.2 Grant. The City acknowledges that the Grant of \$1.5 million set forth in Section 8.3(c) of the Development Agreement may be used at the Company's discretion to fund any capital expenditures at the facility and that no costs to be borne by the City under the Development or this Agreement will be charged against the Grant commitment.

Section 5.3 Responsibility for Oxidizer. Other than paying its share of the cost, the City will have no responsibility for the design, construction or performance of the Oxidizer. The City will remain responsible to provide a warranty on the Base WWS to be conveyed consistent with Section 8.1(c) of the Development Agreement (the "Warranty"). However, this Warranty will extend for one year from June 14, 2016, and does not apply to the product and material warranties referenced in Section 3.2.

ARTICLE VI RELEASE AND NO ADVERSE ACTION

Section 6.1 Mutual Release.

The Company, the City and Banner Associates, Inc. ("Banner") mutually release each other from any and all claims, losses, damages of any kind, costs, legal fees and expenses, obligations, actions, causes of action, rights of subrogation, whether in tort, contract or otherwise, and demands arising out of the design and construction of the Base WWS for Phases I and II that are known or should have been known as of June 14, 2016 (the "Claims"). No litigation relating to the Claims will be brought. Nothing in this Mutual Release shall apply to any claims that are not known or could not have been known as of June 14, 2016, nor shall this Mutual Release affect or impair the Company's rights under the City's Warranty or relieve the City from completing the punchlist items listed on Exhibit B. This section shall not impose any duty of inquiry or inspection on the Company to discover any Claims. The City, the Company and Banner agree that this Agreement is a compromise of doubtful and disputed claims and is not intended, nor shall it be construed, as an admission of liability or fault or breach of any duty by any of the parties hereby released, by whom liability is expressly denied.

The Company, the City and Banner agree this release is intended to release all claims between the City, the Company and Banner as set forth above and by executing this Agreement, Banner hereby joins and agrees to the mutual release provisions contained herein.

ARTICLE VII GENERAL PROVISIONS

Section 7.1 Authority. The Parties represent that they are authorized to enter into this Agreement. On or prior to the date of this Agreement the City Council has taken, if needed, all legally required actions to formally approve this Agreement, and to make it a legal, valid, and binding obligation of the City, enforceable in accordance with its terms. If the City Council's approval of this Agreement or anything contemplated hereunder is

hereafter referred to a public vote, the Company may terminate this Agreement upon written notice to the City.

Section 7.2 Term of Agreement. The term of this Agreement will commence on the date it has been duly approved and executed by the City and the Company (the “*Effective Date*”) and will continue in effect until all parties have completed the performance of all of their obligations under this Agreement.

Section 7.3 Specific Performance. The City and the Company each acknowledge and agree that the City and the Company would be damaged irreparably in the event that any of the provisions of this Agreement not performed in accordance with their specific terms or otherwise are breached. Accordingly, the City and the Company, to the extent permitted by law will be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement in any action instituted in any court having jurisdiction, in addition to any other remedy to which the City or the Company may be entitled, at law or in equity. Prior to filing an action for injunctive relief, a party must give written notice of any claimed breach which provides a party with a thirty (30) day period to remedy the breach and agrees that if a party institutes any action or proceeding to enforce any provision hereof the party against whom injunctive relief is sought, hereby waives the claim or defense that the party seeking injunctive relief has or will have an adequate remedy at law for money damages.

Section 7.4 Governing Law. This Agreement will be construed and enforced under the laws of the State of South Dakota, without regard to conflict of law provisions.

Section 7.5 Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

Section 7.6 Notices. Any notice, request, demand, claim, or other communication hereunder shall be in writing and shall be deemed duly given or made (a) when personally delivered to the intended recipient (or an officer of the intended recipient), (b) three (3) days after it is sent by certified first class mail, return receipt requested, postage prepaid, (c) two (2) days after it is sent by recognized overnight courier service, or (d) when sent by facsimile service (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), to the following addresses and recipients:

CITY OF BROOKINGS

520 – 3rd Street, Ste. 230
P. O. Box 270
Brookings, SD 57006

Telephone: 605-692-6281

Email:

Attention: Jeff Weldon, City Manager

COMPANY

Bel Brands USA, Inc.
30 S. Wacker Drive, 30th Floor
Chicago, IL 60606

Telephone: 312-489-5280

Email: fnallis@groupe-bel.com

Attention: Frederic Nallis, President and
CEO

With cc: Didier Aziza, CFO

Telephone: 312-462-1529

Email: daziza@belbrandsusa.com

or to such other address as the receiving Party shall have most recently forwarded to the sending Party.

Section 7.7 Binding Nature. It is the intention of the Parties that the commitments and obligations set forth herein shall be binding upon the Parties hereto and their respective successors and permitted assigns.

Section 7.8 Article and Section Titles and Headings. The article and section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 7.9 Incorporation of Exhibits. The exhibits identified in this Agreement and annexed hereto are incorporated herein by reference and made a part hereof. If any provision of this Agreement conflicts with or is inconsistent with any exhibit annexed hereto, the terms, conditions and obligations set forth in this Agreement shall control.

Section 7.10 Further Assurances. The parties each agree to do all things and take all actions required after the date hereof to promptly address all matters contemplated herein, including the obtaining, execution and delivery of all necessary or desirable signatures, agreements, filings, consents, authorizations, approvals, licenses or deeds.

Section 7.11 No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement will not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

Section 7.12 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and duly signed by an authorized representative of each of the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Section 7.13 Construction. This Agreement has been negotiated by the parties and their respective legal counsel, and legal or equitable principles that might require the construction of this Agreement or any provision of this Agreement against the Party drafting this Agreement will not apply in any construction or interpretation of this Agreement.

Section 7.14 Jurisdiction. Any lawsuit arising out of related to this Agreement or the Development Agreement must be brought in a court of competent jurisdiction in the State of South Dakota. Each party hereto hereby irrevocably consents to the jurisdiction of such courts and waives any objection to such jurisdiction based on the doctrine of forum *non-conveniens*.

Section 7.15 Force Majeure. In the event of any Party hereto being rendered unable, wholly or in part, by reason of Force Majeure to carry out its obligations hereunder (other than the obligation to make payment of amounts due hereunder), or to meet the requirements to earn a payment or other commitment of another Party hereto, the obligations of the disabled party suffering such Force Majeure event shall be suspended during the continuance of any inability so caused, but for no longer period and/or the deadline to earn any such payments or other benefits shall be tolled for the period of such Force Majeure event and the deadline shall be extended for the period of such Force Majeure event; provided, however, that such Party suffering the Force Majeure event shall (a) deliver prompt notice, to the Party to whom the obligations are due, of the occurrence of such a Force Majeure event (such notice to describe the circumstances creating the event and the steps that such Party proposes to take to eliminate the event or the effects thereof), (b) use its best efforts to eliminate such event or the effects thereof and shall deliver periodic status reports regarding such efforts to the Party to whom the obligations are due, (c) promptly deliver notice to the Party to whom the obligations are due when such event has been eliminated or has ceased to prevent the performance of the suffering Party's obligations and (d) proceed to fulfill or perform such obligations as soon as reasonably practical after the event has been eliminated or has ceased to prevent the performance of the suffering Party's obligations.

Section 7.16 Survival of Representations and Warranties. The covenants, representations and warranties made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such covenants, representations and warranties relate.

Section 7.17 Remaining Terms Unaffected. Except as specifically modified herein, the terms of the Development Agreement remain in effect.

Section 7.18 Time is of the Essence. Time is of the essence of this Agreement.

Section 7.19 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 7.20 Entire Agreement. This Agreement constitutes the entire agreement among the Parties hereto and supersedes any prior understandings, agreements or representations by or among the Parties hereto, whether written or oral to the extent they relate to the subject matter herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above mentioned.

ATTEST:

Shari Thornes, City Clerk

CITY OF BROOKINGS, SOUTH DAKOTA
By: _____
Name: Tim Reed
Title: Mayor

BEL BRANDS USA, INC.
By: _____
Name: _____
Title: _____

BANNER ASSOCIATES, INC.
By: _____
Name: _____
Title: _____

LIST OF EXHIBITS

- EXHIBIT A. DESCRIPTION OF OXIDIZER
- EXHIBIT B. PUNCHLIST
- EXHIBIT C. COSTS NECESSITATED BY UPGRADE
- EXHIBIT D. FORM OF TRANSFER INSTRUMENT

Exhibit "C"

EXHIBIT E.

Adjourn. A motion was made by Council Member Hansen, seconded by Council Member Corbett, to adjourn the meeting at 7:25 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

Tim Reed, Mayor

ATTEST:

Shari Thornes, City Clerk